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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF TEXAS

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Charles Thurston,

Plaintiff,

*versus*

Merck & Co., Inc., *et al.*,

Defendants.

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Civil Action H-09-3629

### Opinion on Dismissal

Charles Thurston is a 64-year old veteran who has sued Merck & Company, Eli Lilly, Inc., and Suzanne D. Brodock, for side effects from the drugs Zocor and Zyprexa. Thurston says that he took Zocor in a hospital and that it damaged his muscles. He said that had he known that it is not recommended for older patients, he would not have taken it. His sources about the drugs' side effects range from WebMD to [www.aboutlawsuits.com](http://www.aboutlawsuits.com).

Merck moved to dismiss on November 12, 2009. On December 12, 2009, Thurston wrote the court a letter that criticized the FDA, insisted that Zocor was poisoning him, and referred to a Canadian study that said that Zocor's side effects are experienced by 10-15% of patients rather than Merck's claimed 1%. He also complained that Zocor's effects on lab animals was not disclosed. He said that he had wanted to sue for more than nine million dollars, but that his creator said he should not sue for more and that he should try to settle for five million dollars. He also said that nine is his lucky number.

On December 22, 2009, Thurston attended a pre-trial conference. The court gave him until January 11, 2010, to add to his response to Merck's motion to dismiss. On January 4, 2010, Thurston informed the court that he had scheduled a doctor's appointment. He wrote again on February 5 and said that he would be seeing a specialist on March 1. On March 3, he said that the doctor had ordered some blood tests and an EMG and would follow with a muscular biopsy if necessary. Since that last letter, he has not contacted the court.

While Thurston was initially diligent in keeping the court apprised of his status, he has had ample time and several extensions to respond to the motion to dismiss and has not.

No more extensions will be granted. Even if Thurston has a muscular biopsy, the results of his medical tests cannot save his claim from being legally unrecognizable. Zocor's FDA-approved label lists myopathy as a side-effect. In Texas, a FDA-approved label is presumed to be an adequate warning. Tex. Civ. Pract. & Rem. Code § 82.007(a).

Thurston also cannot say when he took the drug, who gave it to him, or how much he took. He cannot establish that Zocor caused his pain or that Merck misrepresented its product.

Because it fails to state a claim, Charles Thurston's suit is dismissed with prejudice.

Signed on May 26, 2010, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'Lynn N. Hughes', is written over a horizontal line.

Lynn N. Hughes  
United States District Judge